

# Client Alert

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## IRS Issues New Cash/Stock Dividend Guidance for REITs

Real estate investment trusts (REITs) occasionally encounter liquidity problems, which are further heightened by the requirement that a REIT distribute at least 90 percent of its taxable income to its shareholders each year.

In the past, some REITs facing liquidity issues have conserved cash by declaring distributions payable in either cash or stock of the REIT at the election of individual shareholders, but subject to a cap on the amount of cash distribution that the REIT can be required to pay. During the credit crisis, the Internal Revenue Service (the IRS) issued temporary guidance approving this practice for publicly traded REITs so long as at least 10 percent of the aggregate distribution was available in cash (the “cash limitation percentage”). Before and after the temporary safe harbor, the IRS has issued numerous private letter rulings to REITs approving a distribution payable in either cash or stock at the election of the individual shareholders, where the cash limitation percentage was 20 percent.

In Revenue Procedure 2017-45 (the Revenue Procedure), the IRS has issued permanent guidance formalizing this ruling practice. Under the Revenue Procedure, dividends described in the Revenue Procedure declared by publicly offered REITs on or after August 11, 2017, and payable in either cash or stock of the REIT at the election of the individual shareholders will be treated as dividends for purposes of the dividends paid deduction. The minimum cash limitation percentage permitted under the Revenue Procedure is 20 percent.

The Revenue Procedure notes that publicly offered REITs are no longer subject to the preferential dividend rules, which means that there is no concern that the receipt by different shareholders of different proportions of cash or stock causes the dividend to be disqualified as preferential.

The Revenue Procedure is consistent with the IRS’s prior ruling practice and gives comfort on this issue to publicly traded REITs without the need for incurring the time or expense of seeking an individual private letter ruling.

If you would like to receive more information about the Revenue Procedure, please contact the attorneys listed below.

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